

EXHIBIT 12

TO PLAINTIFF'S STATEMENT OF UNDISPUTED MATERIAL
FACTS IN SUPPORT OF ITS MOTION FOR SUMMARY
JUDGMENT AGAINST DEFENDANT ERIC MONCADA

1 UNITED STATES DISTRICT COURT

2 FOR THE SOUTHERN DISTRICT OF NEW YORK

3 - - - - -x

4 UNITED STATES COMMODITY FUTURES TRADING
5 COMMISSION,

6 Plaintiff,

7 -against-

8 ERIC MONCADA; BES CAPITAL LLC; and SERDIKA

9 Defendants.

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15 DEPOSITION OF PATRICK MORIARTY

16 New York, New York

17 July 26, 2013

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20 REPORTED BY:

21 DANIELLE GRANT

22 JOB NO. 29379
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July 26, 2013

9:11 a.m.

Deposition of PATRICK MORIARTY, held at
the offices of CFTC, 140 Broadway, New York, New
York pursuant to Notice before DANIELLE GRANT, a
Shorthand Reporter and Notary Public of the State
of New York.

A P P E A R A N C E S:

UNITED STATES COMMODITY FUTURES TRADING COMMISSION

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BY: RICHARD M. ASCHE, Esq., of Counsel

1 Mr. Peev, have you kept in touch with anyone
2 else you worked with at Serdika?

3 A I speak with my friend Mike Zager
4 quite a bit. Every once in a while I speak
5 with Eric Moncada.

6 Q When was the last time you spoke
7 to Mr. Moncada?

8 A Yesterday, actually.

9 Q What did you discuss?

10 A He wanted to know how my job was
11 going. He said he was thinking about doing the
12 same type of thing out there.

13 Q How often do you talk to or have
14 contact with Mr. Moncada?

15 A It varies. Sometimes months go
16 by. Sometimes we'll talk a couple of times a
17 week.

18 Q Have you ever talked to Mr.
19 Moncada about the CFTC's lawsuit?

20 A No.

21 Q Have you ever talked to him in
22 general about any -- about the CC investigation
23 before the lawsuit was filed?

24 A Not in any depth. He informed me
25 what was going go on. That was really it.

1 while at Serdika?

2 A Yes.

3 Q Do you know where that account or
4 what clearinghouse held that account?

5 A We had a number of different
6 clearing firms. I remember we had Penson, JCL,
7 Advantage Futures. I think he cleared through
8 New Edge also. I'm not quite sure, though.

9 Q Did you trade an account at
10 Penson?

11 A Yes, I did.

12 Q Did you trade an account at
13 Advantage?

14 A Yes, I did.

15 Q Did you trade an account at New
16 Edge?

17 A I don't remember.

18 Q Did you ever trade French milling
19 wheat?

20 A I did, but very, very
21 infrequently.

22 Q Who gave you authorization to
23 trade in the accounts?

24 A Emil Dontchev.

25 Q We spoke briefly earlier about the

1 products that you were you trading, but I guess
2 just to make it a little clearer as to what you
3 were trading for Serdika as part of personal
4 account, just to focus on Serdika, what
5 products did you trade?

6 A Mainly Chicago wheat, Kansas City
7 wheat, WTI crude, Brent crude. Those are the
8 main products. If I did anything else, I don't
9 even really remember, but there might have been
10 a time where I traded something else very
11 small. I don't recall.

12 Q While you were trading at Serdika.
13 did you report to Emil Dontchev?

14 A Yes.

15 Q Did you have to get Mr. Dontchev
16 to approve products before you could trade
17 them?

18 A Yes.

19 Q Did Mr. Dontchev have to approve
20 any trading strategies before you could use
21 them?

22 A We would discuss it. I guess you
23 could say yes.

24 Q And while you were there, what
25 strategies, or what tradings -- I guess what

1 he was talking about there?

2 A I would imagine -- I'm just
3 guessing. I'm thinking he was probably talking
4 about the wheat spread. It must be wheat,
5 because I said wheat spreads were trading 11.50
6 for March. He said he sold 11.

7 Q So 1150 is 11.50?

8 A Correct.

9 Q So, this sort of IM, this would be
10 the kind of conversation you would have?

11 A Mm-hmm. And it seems like he's
12 away, so probably not in front of a full
13 system, so I guess I was probably filling him
14 in on what's going on on everything.

15 Q If you skip over that to the 6:39
16 time stamp on the second page, Mr. Moncada is
17 saying, "Currency is starting out strong. I
18 think they're going to rally." Do you know
19 what market you may have been talking about
20 there?

21 A I'm not sure. He probably is
22 talking about the dollar Euro spread, but I'm
23 not sure.

24 Q Was that a market you were trading
25 in?

1 A I don't remember. Eric had a lot
2 of weekends. I think they were in St. Thomas
3 or something. There was a whole bunch of
4 people down there. I'm really not sure.

5 Q Do you know if Yuriy is referring
6 to Yuriy Cumming?

7 A I'm not sure.

8 Q A little further down at the 1:30
9 time stamp, Moncada says, "Ha, no way I can
10 make it there today." Your response, "LOL."

11 What is LOL?

12 A Laughing out loud.

13 Q Did you use LOL a lot in IMs?

14 A Yeah. Yes.

15 Q What would you be trying to
16 communicate when you said LOL?

17 A Because I understand when he says
18 I'm not going to be in today, that means he
19 probably hurt himself the night before. I
20 mean, look at the next line, 1:30, from him.
21 They weren't away. They were -- it looks like
22 they were still in the city.

23 Q Do you know what they were talking
24 about?

25 A No, I don't.

1 Q If you flip over to the second
2 page at the time stamp 1:12 p.m., Mr. Moncada
3 says, "Oh, yeah, watch wheat dump Cada on the
4 close"?

5 A Mm-hmm.

6 Q Cada, is that a reference to
7 himself?

8 A I forget who coined the phrase.
9 One day we were trading. When the market was
10 ripping one way or the other, I forget who said
11 it, but somebody said, oh, look at this market.
12 It's ripped Cada, or it's going to dump Cada.
13 We would just take his name and attach it to
14 it. I don't know why. It was funny.

15 Q So, what do you think he means by
16 "watch wheat dump Cada"?

17 A He thought it was going to fall
18 apart at the close. That's what I would take
19 from it.

20 Q And by fall apart, what do you
21 mean?

22 A Just go down, go lower.

23 Q You respond, "Yeah, I saw the
24 reports from the floor. The only to be careful
25 of is month-end buying." Do you know what

1 you're talking about?

2 A Probably referencing that earlier
3 line from Schuck saying month-end buying -- MOC
4 buying in corn from 12/29. What we referenced
5 earlier, Shuck saying massive MOC buying in
6 corn today, and market on close buying. And
7 then at 1:12 p.m., he's talking about it going
8 lower at the close. So my response was, "Yeah,
9 the report from the floor, you have to be
10 careful MOC buying."

11 Q And the month-end buying, what
12 does that refer to?

13 A MOC, from the earlier line.

14 Q If you look at the 1:15 p.m., you
15 say, "Is that you fucking around with the 500
16 lot?" And his response, "Of course ONT," and
17 the next line, "NOT," not. Do you know what
18 you were talking about there?

19 A There was probably somebody
20 putting size on the market.

21 Q What do you mean by that?

22 A Putting orders at the market or,
23 you know, in the market, in the deck anyway.
24 Somebody was putting 500 lots in.

25 Q And his response, "Of course not,"

1 do you think he was being sarcastic?

2 A Hard to tell. I mean, he's not
3 going to tell me if it's him or not. Nobody is
4 going to tell you exactly what they're doing.
5 I don't know.

6 Q You responded to him, "Of course
7 not, LOL," laugh out loud.

8 A Mm-hmm.

9 Q Does that look to you like you
10 thought he was being sarcastic?

11 A Not necessarily. I mean, we joked
12 around with each other a lot, you know.
13 Sometimes we would take credit for things that,
14 you know -- we were just having fun with each
15 other.

16 Q Why did you send an IM to Mr.
17 Moncada about somebody putting size on the
18 market? Why would you ask if it was him?

19 A Because it was always whenever
20 somebody would trade that kind of volume, he
21 knew that that scared the living hell out of
22 me. So, if somebody is trying to get into a
23 market, like toward the end of the session,
24 there's an hour left in the session, somebody
25 is trading, you know, that kind of size, I

1 A Okay.

2 Q There is the buy and sell column.

3 It will say either S or B. It's pretty

4 self-explanatory. Quantity, number of lots,

5 price_AT is the price. Various other columns.

6 The only other one there I would note for you

7 is the last one. It says, "Order_AT." I'll go

8 ahead and tell you that is the unique order

9 identifier that CME generates through the

10 Globex platform assigned to each order.

11 And just to also, I guess,

12 explain, you have to keep in mind when we look

13 at this you were -- at this time you were

14 located in New York, correct, and back in

15 September '09?

16 A I believe so, yes.

17 Q As was Mr. Moncada?

18 A I believe so.

19 Q Which is in the Eastern time zone,

20 correct?

21 A Yes.

22 Q And Chicago Board of Trade is

23 located in Chicago, which is in the Central

24 time zone. So, we'll just go ahead and say

25 we'll be -- where it's relevant?

1 A There is a one-hour difference.

2 Q There is a one-hour difference.

3 A Yes, I understand.

4 Q Just for the record. It's a lot
5 of buildup to get things on the record. I
6 guess before we get into any questions, do you
7 feel like you --

8 A I understand what this is, yes.

9 Q If we can go forward to page 12 of
10 29, if you look in the confirm time, the column
11 which is the fifth column over?

12 A Mm-hmm.

13 Q Page 12.

14 A Give me the time again, please.

15 Q 121430.889?

16 A Yes, I do.

17 Q If you look over at the "Quantity"
18 column, which is three columns to the right,
19 there is a 500-lot order. You can see it's a
20 new order based off of the function code 1, and
21 it's a sell order for 500 lots.

22 Then in the immediate next line is
23 the function code 3, indicating that the order
24 was canceled. Do you see that?

25 A Okay, yes.

1 Q And you never asked anybody else
2 if it was him?

3 A Nobody else that I was that
4 friendly with that I knew of traded that kind
5 of size, you know, that I felt comfortable
6 enough talking about with. You know, Emil
7 doesn't talk to anyone so I wouldn't bring that
8 up with him or any other traders, really. Just
9 Eric and I were friends and I felt comfortable
10 to say was that you.

11 Q Over on the Gchat, you say, "Is
12 that you fucking around with the 500 lots?"
13 Why would you use the term "fucking around"?

14 A Because I think it's a crazy thing
15 to do.

16 Q Why?

17 A Because there's too much leverage
18 there. It's too much to do for me. I think
19 it's crazy.

20 Q What about the fact that the
21 orders get canceled so immediately. Is that
22 why you --

23 A It depends where the market is. I
24 mean, was he on the bid? Or what -- is he
25 trying to sell? I don't remember specifically.

1 It's ... so I can't remember what I was seeing.
2 It depends on what you're trying to do, what
3 your position is. Is there anything in here
4 that says what his position size was, what he
5 had on at the time?

6 Q Not on this data.

7 A I don't know.

8 Q But the fact that the orders go in
9 and are canceled in under a second, is that why
10 you used the term "fucking around"?

11 A I would -- I would use that term
12 if I saw anybody putting that kind of size in
13 on the market going into -- we're at the last
14 hour of trade there. I used that term a lot.
15 If we were banging a spread back and forth and
16 you felt comfortable with the range and I was
17 sizing up for me, I might use that term.

18 Q What do you meaning by banging the
19 spread?

20 A Well, just trading a spread, you
21 know, in a range. Say it's range-bound and
22 you're just trading both sides of it.

23 Q Does the term banging the close
24 mean anything to you?

25 A Banging the close, not really.

1 Q Did you know that the majority of
2 large lot orders being placed in the market
3 were actually being placed by Mr. Moncada?

4 A No, I didn't know that.

5 Q What would you have thought if you
6 had known that?

7 MR. ASCHE: Objection to the form
8 of the question.

9 A I don't know what I would have
10 thought.

11 Q In the September 30th Gmail chat
12 you used the phrase, "is that you fucking
13 around with the 500 lots." Do you think that
14 Mr. Moncado was fucking around by putting in
15 these big orders and canceling them?

16 A I would use that term, like I said
17 before, if I saw something, I don't know why I
18 thought it was him, it was just on my mind and
19 to be in the market for that much size to me is
20 crazy and I would say why you effing around
21 like this. It's the same thing

22 Q But there is a difference between
23 being in the market and trying to execute a
24 trade and being in the market and putting in an
25 order and cancelling it?

UNITED STATES CFTC -against- ERIC MONCADA, ET AL.
Patrick Moriarty on 07/26/2013

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CERTIFICATE

STATE OF NEW YORK)

) ss:

COUNTY OF RICHMOND)

I, DANIELLE GRANT, a Certified
Shorthand Reporter, and Notary
Public within and for the State of
New York, do hereby certify:
That PATRICK MORIARTY, the witness
whose deposition is hereinbefore
set forth, was duly sworn by me and
that such deposition is a true
record of the testimony given by
such witness.

I further certify that I am not
related to any of the parties to
this action by blood or marriage
and that I am in no way interested
in the outcome of this matter.

In witness whereof, I have hereunto
set my hand this 3rd day of August,
2013.



DANIELLE GRANT